



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 220609-0132]

RIN 0648-BI72

Civil Procedures in Civil Administrative Enforcement Proceedings

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA is amending procedures governing its civil administrative enforcement proceedings. The principal changes include updates to statutory references, clarifications regarding the Administrator's discretionary review, revised directions for appealing a written warning, revised requirements for denying a request for admission, and revised directions for electronic service related to certain appeals and petitions. Other changes remove the requirement for NOAA to challenge late hearing requests, simplify the use of electronic signatures, rename discovery filings, allow depositions by videoconference, require discovery filings to state when a witness is expected to testify in a language other than the English language in order to arrange interpretation, clarify when failing to pay can be a basis for permit sanctions, incorporate Civil Asset Forfeiture Reform Act deadlines into administrative forfeiture proceedings, and allow NOAA to publish a Notice of Proposed Forfeiture on an official government website. In addition, minor changes update titles and addresses and correct clerical errors.

DATES: This rule becomes effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Patrick Carroll or Meggan Engelke-Ros, GCES, (301) 427-2202

SUPPLEMENTARY INFORMATION: A detailed description of the changes and clarifications proposed for regulations at 15 CFR part 904 is found in the proposed rule that NOAA published in the Federal Register at 87 FR 16687 (March 24, 2022) and is not repeated here.

Public Comments Received

NOAA received one comment from the public during the comment period for the proposed rule. This comment is summarized here and is directly followed by NOAA's response.

Comment: The commenter generally suggests that the revisions to 15 CFR part 904, characterized by NOAA as non-substantive, in fact diminish the due process protections afforded to Respondents and restrict their ability to contest violations charged under these regulations. The commenter also expresses a general belief that this revision provides some undue advantage to NOAA, restricts an administrative law judge's authority to issue decisions, and makes it more difficult for the public to understand their rights within this civil administrative process. Specifically, the commenter challenges NOAA's explanation that the proposed removal and reservation of 15 CFR 904.103 merely removes language that is redundant with other existing provision; the commenter requests that NOAA explain what language in 15 CFR 904.103 was redundant.

Response: As explained within the proposed rule, all of the revisions to 15 CFR part 904 merely refine the procedures applicable to NOAA's civil administrative enforcement proceedings. The principal changes afford greater transparency in the application of the NOAA Administrator's discretionary review authority, emphasize impartiality within the written warning appeal process, ensure that responses to requests for admission mirror similar requirements found in Federal Rule of Civil Procedure 36,

and clarify the proper channels by which certain appeals and petitions for relief may be filed, including new and updated mailing and electronic mailing addresses.

Other changes remove the requirement for NOAA attorneys to challenge late hearing requests in all circumstances, and simplify and modernize discovery filings, the taking of depositions by videoconference, and the arrangement of interpreters. NOAA is also clarifying its permit sanction procedures and administrative forfeiture proceedings to better explain the application of those provisions, and is authorizing the publication of a Notice of Proposed Forfeiture on a publically available and official government website to expand the available options for achieving effective public notice of the information and rights described at 15 CFR 904.504(b)(2).

Neither the aforementioned revisions nor any of the several clerical corrections made in this final rule undermine principles of due process or diminish a respondent's right to contest a charged violation. Instead, NOAA's amendments increase the accessibility of these procedures and advance fair and just outcomes in NOAA's civil administrative enforcement proceedings.

With respect to the commenter's query regarding 15 CFR 904.103, that section merely reiterates that hearing requests are governed by the procedures set forth in Subpart C of these regulations. 15 CFR 904.200 explains the scope and applicability of Subpart C, and provides that this subpart "sets forth the procedures governing the conduct of hearings." In addition, 15 CFR 904.201 specifically addresses the filing and receipt of hearing requests as well as the docketing of matters with the Office of Administrative Law Judges. Furthermore, the various sections within Subpart C all govern hearing and appeal procedures. As a result, 15 CFR 904.103 is repetitive of the provisions located within Subpart C, and thus, that section is removed and reserved to delete redundancy.

In order to ensure that respondents are apprised of their rights, as a matter of practice and as required by these procedural regulations, NOAA attorneys provide a copy

of 15 CFR part 904 to a respondent whenever an enforcement action is initiated against them. *See* 15 CFR 904.101(a)(5). In addition, these regulations remain publicly available within the United States Code of Federal Regulations, and NOAA continues to include a link to these regulations on the NOAA Office of General Counsel Website. *See* <https://www.gc.noaa.gov/enforce-office4.html>.

Changes from the Proposed Rule

This final rule contains no changes from the proposed rule.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There are no reporting, recordkeeping or other compliance requirements in this rule. Nor does this rule contain an information-collection request that would implicate the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, fisheries, fishing, fishing vessels, penalties, seizures and forfeitures.

Dated: June 17, 2022.

Walker Smith

General Counsel

National Oceanic and Atmospheric Administration

For reasons set forth in the preamble, 15 CFR part 904 is amended as follows:

PART 904—CIVIL PROCEDURES

1. The authority citation for part 904 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1361 *et seq.*, 16 U.S.C. 3371 *et seq.*, 16 U.S.C. 1431 *et seq.*, 16 U.S.C. 6901 *et seq.*, 16 U.S.C. 773 *et seq.*, 16 U.S.C. 951 *et seq.*, 16 U.S.C. 5001 *et seq.*, 16 U.S.C. 3631 *et seq.*, 42 U.S.C. 9101 *et seq.*, 30 U.S.C. 1401 *et seq.*, 16 U.S.C. 971 *et seq.*, 16 U.S.C. 781 *et seq.*, 16 U.S.C. 2431 *et seq.*, 16 U.S.C. 972 *et seq.*, 16 U.S.C. 916 *et seq.*, 16 U.S.C. 1151 *et seq.*, 16 U.S.C. 3601 *et seq.*, 16 U.S.C. 1851 note; 15 U.S.C. 330 *et seq.*, 16 U.S.C. 2461 *et seq.*, 16 U.S.C. 5101 *et seq.*, 16 U.S.C. 1371 *et seq.*, 16 U.S.C. 3601 *et seq.*, 16 U.S.C. 1822 note, 16 U.S.C. 4001 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 5601 *et seq.*, 16 U.S.C. 973 *et seq.*, 16 U.S.C. 1827a, 16 U.S.C. 7701 *et seq.*, 16 U.S.C. 7801 *et seq.*, 16 U.S.C. 1826g, 51 U.S.C. 60101 *et seq.*, 16 U.S.C. 7001 *et seq.*, 16 U.S.C. 7401 *et seq.*, 16 U.S.C. 2401 *et seq.*, 16 U.S.C. 1826k note, 1857 note, 22 U.S.C. 1980, Pub. L. No. 116-340, 134 Stat. 5128.

2. In § 904.1, revise paragraphs (c)(1) through (34) and add paragraphs (c)(35) through (40) to read as follows:

§ 904.1 Purpose and scope.

* * * * *

(c) * * *

- (1) Anadromous Fish Products Act, 16 U.S.C. 1822 note;
- (2) Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.*;
- (3) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C.

2431 *et seq.*;

(4) Antarctic Mineral Resources Protection Act of 1990, 16 U.S.C. 2461 *et seq.*;

(5) Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*;

(6) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.*;

(7) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(8) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.*;

(9) Billfish Conservation Act of 2012, 16 U.S.C. 1827a;

(10) DESCEND Act of 2020, Pub. L. No. 116-340, 134 Stat. 5128;

(11) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;

(12) Dolphin Protection Consumer Information Act, 16 U.S.C. 1371 *et seq.*;

(13) Driftnet Impact Monitoring, Assessment, and Control Act, 16 U.S.C. 1822 note;

(14) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972 *et seq.*;

(15) Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*;

(16) Ensuring Access to Pacific Fisheries Act, 16 U.S.C. 7701 *et seq.* (North Pacific), 16 U.S.C. 7801 *et seq.* (South Pacific);

(17) Fish and Seafood Promotion Act of 1986, 16 U.S.C. 4001 *et seq.*;

(18) Fisherman's Protective Act of 1967, 22 U.S.C. 1980;

(19) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151 *et seq.*;

(20) High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826g;

(21) High Seas Fishing Compliance Act, 16 U.S.C. 5501 *et seq.*;

(22) Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;

(23) Land Remote Sensing Policy Act of 1992, as amended, 51 U.S.C. 60101 *et seq.*;

- (24) Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*;
- (25) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*;
- (26) National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*;
- (27) North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. 5001 *et seq.*;
- (28) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 *et seq.*;
- (29) Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.*;
- (30) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;
- (31) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.*;
- (32) Pacific Whiting Act of 2006, 16 U.S.C. 7001 *et seq.*;
- (33) Port State Measures Agreement Act of 2015, 16 U.S.C. 7401 *et seq.*;
- (34) Shark Conservation Act of 2010, 16 U.S.C. 1826k note, 1857 note;
- (35) South Pacific Tuna Act of 1988, 16 U.S.C. 973 *et seq.*;
- (36) Sponge Act, 16 U.S.C. 781 *et seq.*;
- (37) Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.*;
- (38) Weather Modification Reporting Act, 15 U.S.C. 330 *et seq.*;
- (39) Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.*; and
- (40) Whaling Convention Act of 1949, 16 U.S.C. 916 *et seq.*

* * * * *

3. In § 904.2:

- a. Remove the definition of “ALJ Docketing Center”;
- b. Revise the definitions of “Applicable statute”, “Authorized officer”, and “Final administrative decision”; and

c. Remove the definition of “PPIP”.

The revisions read as follows:

§ 904.2 Definitions and acronyms.

* * * * *

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Authorized officer means:

- (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG);
- (2) Any special agent or fishery enforcement officer of NMFS;
- (3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce to enforce the provisions of any statute administered by NOAA; or
- (4) Any USCG personnel accompanying and/or acting under the direction of any person described in paragraph (1), (2), or (3) of this definition.

* * * * *

Final administrative decision means an order or decision of NOAA assessing a civil penalty, permit sanction, or written warning, which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

* * * * *

4. Revise § 904.3 to read as follows:

§ 904.3 Filing and service.

(a) Service of a NOVA (§ 904.101), NOPS (§ 904.302), NIDP (§ 904.303), Notice of Proposed Forfeiture (§ 904.504), Notice of Seizure (§ 904.501), Notice of Summary Sale (§ 904.505), Written Warning (§ 904.402), or Initial Decision (§ 904.271) may be made by certified mail (return receipt requested), electronic transmission, or third

party commercial carrier to an addressee's last known address or by personal delivery.

Service of a notice under this subpart will be considered effective upon receipt.

(b) Service of documents and papers, other than those described in paragraph (a) of this section, may be made by first class mail (postage prepaid), electronic transmission, or third party commercial carrier, to an addressee's last known address or by personal delivery. Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), delivery to third party commercial carrier, electronic transmission, or upon personal delivery.

(c) Whenever this part requires service of a document or other paper referred to in paragraph (a) or (b) of this section, such service may effectively be made on the agent for service of process, on the attorney for the person to be served, or other representative. Refusal by the person to be served (including an agent, attorney, or representative) of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. In cases where a document or paper described in paragraph (a) of this section is returned unclaimed, service will be considered effective if the U.S. Postal Service provides an affidavit stating that the party was receiving mail at the same address during the period when certified service was attempted.

(d) Any documents and other papers filed or served must be signed:

- (1) By the person or persons filing the same;
- (2) By an officer thereof if a corporation;
- (3) By an officer or authorized employee if a government instrumentality; or
- (4) By an attorney or other person having authority to sign.

5. In § 904.4, revise the first sentence to read as follows:

§ 904.4 Computation of time periods.

For a NOVA, NOPS or NIDP, the 30-day response period begins to run on the

date the notice is received. * * *

6. In § 904.101, revise paragraph (a) introductory text to read as follows:

§ 904.101 Notice of violation and assessment (NOVA).

(a) A NOVA will be issued by NOAA and served on the respondent(s). The NOVA will contain:

* * * * *

7. In § 904.102, revise paragraphs (c) and (d) to read as follows:

§ 904.102 Procedures upon receipt of a NOVA.

* * * * *

(c) The respondent may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or she determines that the requester could, exercising reasonable diligence, respond within the 30-day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (c) of this section.

§ 904.103 [Removed and Reserved]

8. Remove and reserve § 904.103.

9. In § 904.105, revise paragraph (a) to read as follows:

§ 904.105 Payment of final civil penalty.

(a) Respondent must make full payment of the civil penalty within 30 days of the date upon which the NOVA becomes effective as the final administrative decision and order of NOAA under § 904.104 or the date of the final administrative decision as

provided in subpart C of this part, as directed by NOAA. Payment must be made in accordance with the bill and instructions provided by NOAA.

* * * * *

10. In § 904.107, revise paragraph (b) to read as follows:

§ 904.107 Joint and several respondents.

* * * * *

(b) A hearing request by one joint and several respondent is considered a request by the other joint and several respondent(s). Agency counsel, having received a hearing request from one joint and several respondent, will send a copy of it to the other joint and several respondent(s) in the case. However, if the requesting joint and several respondent settles with the Agency prior to the hearing, upon notification by the Agency, any remaining joint and several respondent(s) must affirmatively request a hearing within the time period specified or the case will be removed from the hearing docket as provided in § 904.213.

* * * * *

11. In § 904.108, revise paragraphs (e), (f), and (h) to read as follows:

§ 904.108 Factors considered in assessing civil penalties.

* * * * *

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel as soon as possible after the receipt of the NOVA. If a respondent has requested a hearing on the violation alleged in the NOVA and wants the Initial Decision of the Judge to consider his or her inability to pay, verifiable, complete, and accurate financial information must be submitted to Agency counsel at least 30 days in advance of the hearing, except where the applicable statute expressly provides for a different time period. No information regarding the respondent's ability to pay submitted by the respondent less than 30 days in advance of the hearing will be admitted at the

hearing or considered in the Initial Decision of the Judge, unless the Judge rules otherwise. If the Judge decides to admit any information related to the respondent's ability to pay submitted less than 30 days in advance of the hearing, Agency counsel will have 30 days to respond to the submission from the date of admission. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an Initial Decision if the financial information was not previously presented by the respondent to the Judge prior to or at the hearing.

* * * * *

(h) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a civil penalty and the respondent has requested a hearing on the violation alleged in the NOVA, the Agency must submit information on the respondent's financial condition so that the Judge may consider that information, along with any other factors required to be considered, in the Judge's assessment of a civil penalty. Agency counsel may obtain such financial information through discovery procedures under § 904.240, or otherwise. A respondent's refusal or failure to respond to such discovery requests may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed civil penalty, or result in respondent being barred from asserting financial hardship.

12. In § 904.200, revise paragraph (a) to read as follows:

§ 904.200 Scope and applicability.

(a) This subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final administrative decisions of NOAA involving alleged violations of the laws cited in § 904.1(c) and any other laws or authorities administered by NOAA and regulations implementing these laws, including civil penalty assessments

and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

* * * * *

13. Revise § 904.201 to read as follows:

§ 904.201 Hearing requests and case docketing.

(a) If the respondent wishes a hearing on a NOVA, NOPS or NIDP, the request must be dated and in writing, and must be served in conformance with § 904.3 on the Agency counsel specified in the notice. The respondent must either attach a copy of the NOVA, NOPS or NIDP or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(b) Any party requesting a hearing under § 904.102(a)(3) must provide current contact information, including a working telephone number and email address (if one is available). The Agency and the Office of Administrative Law Judges must be promptly notified of any changes to this information.

(c) If a written application is made to NOAA after the expiration of the time period established in this part for the required filing of hearing requests, Agency counsel will promptly forward the request for hearing along with documentation of service and any other relevant materials to the Office of Administrative Law Judges for a determination on whether such request shall be considered timely filed. Determinations by the Judge regarding untimely hearing requests under this section shall be in writing.

(d) Upon its receipt for filing in the Office of Administrative Law Judges, each request for hearing will be promptly assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

14. In § 904.202, revise paragraph (a) to read as follows:

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed directly with the Office of Administrative Law Judges, be served on all other parties, and conform with all applicable requirements of § 904.3.

* * * * *

15. In § 904.204, revise paragraphs (a) and (m) to read as follows:

§ 904.204 Duties and powers of Judge.

* * * * *

(a) Rule on timeliness of hearing requests pursuant to § 904.201(c);

* * * * *

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

* * * * *

16. In § 904.206, revise paragraphs (a), (b), and (d) to read as follows:

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Judge and a copy served on the Office of Administrative Law Judges and each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(b).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, signed; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, if possible, except that quotations may be single spaced and indented.

* * * * *

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after service of the motion. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

* * * * *

17. Revise § 904.209 to read as follows:

§ 904.209 Expedited administrative proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the administrative proceeding. A motion by a party to expedite the administrative proceeding may, at the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. Upon granting a motion to expedite the scheduling of an administrative proceeding, the Judge may expedite pleading schedules, prehearing conferences and the hearing, as appropriate. If a motion for an expedited administrative proceeding is granted, a hearing on the merits may not be scheduled with less than 5 business days' notice, unless all parties consent to an earlier hearing.

18. Revise § 904.214 to read as follows:

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the administrative proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served on all parties.

19. In § 904.216, revise paragraph (a) introductory text to read as follows:

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, direct the parties to appear for a conference or arrange a telephone conference. The Judge shall provide at least 24 hours' notice of the conference to the parties, and shall record such conference by audio recording or court reporter, to consider:

* * * * *

20. In § 904.240, revise paragraphs (a), (b), and (f) introductory text to read as follows:

§ 904.240 Discovery generally.

(a) *Initial Disclosures.* Prior to hearing, the Judge shall require the parties to submit Initial Disclosures and set a deadline for their submission. Except for information regarding a respondent's ability to pay an assessed civil penalty, these Initial Disclosures will normally obviate the need for further discovery.

(1) The Initial Disclosures shall include the following information: A factual summary of the case; a summary of all factual and legal issues in dispute; a list of all defenses that will be asserted, together with a summary of all factual and legal bases supporting each defense; a list of all potential witnesses, together with a summary of their anticipated testimony; and a list of all potential exhibits.

(2) The Initial Disclosures must be signed by the parties or their attorneys and must be served on all parties in conformance with § 904.3, along with a copy of each potential exhibit listed therein.

(3) A party has the affirmative obligation to supplement their Initial Disclosures as available information or documentation relevant to the stated charges or defenses becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: Deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed civil penalty, the Agency may serve any discovery request (i.e., deposition, interrogatories, admissions, production of documents) directly upon the respondent in conformance with § 904.3 of this part without first seeking an order from the Judge.

* * * * *

(f) *Failure to comply.* If a party fails to comply with any provision of this section, including with respect to their Initial Disclosures, a subpoena, or an order concerning discovery, the Judge may, in the interest of justice:

* * * * *

21. In § 904.241, revise paragraphs (a), (c), and (d)(1) to read as follows:

§ 904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person and on any other party written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name, mailing address, telephone number, and email address (if one is available) of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

* * * * *

(c) *Alternative deposition methods.* By order of the Judge, the parties may use

other methods of deposing parties or witnesses, such as telephonic depositions, depositions through videoconference, or depositions upon written questions. Objections to the form of written questions are waived unless made within 5 days of service of the questions.

(d) * * *

(1) At hearing, part or all of any deposition, so far as admissible under this Part as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition or had reasonable notice.

* * * * *

22. In § 904.242, revise paragraphs (a) and (b) and add paragraph (d) to read as follows:

§ 904.242 Interrogatories.

(a) *Service and use.* If ordered by the Judge, any party may serve upon any other party written interrogatories in conformance with § 904.3.

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers must be signed by the person making them and objections must be signed by the party or attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories in conformance with § 904.3.

* * * * *

(d) *Use of interrogatories at hearing.* Answers may be used at hearing in the same manner as depositions under § 904.241(d).

23. In § 904.243, revise paragraphs (a) and (b) to read as follows:

§ 904.243 Admissions.

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the

request in conformance with § 904.3, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter for which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request in conformance with § 904.3, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

* * * * *

24. In § 904.250, revise paragraph (a) to read as follows:

§ 904.250 Notice of time and place of hearing.

(a) The Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Judge shall fix the time, place and date for the hearing and shall notify all parties of the same. The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not be held less than 20 days after service of the notice of hearing unless the hearing is expedited as provided under paragraph (d) of this section.

* * * * *

25. In § 904.251, revise paragraphs (a)(3) and (i) and add paragraph (j) to read as follows:

§ 904.251 Evidence.

(a) * * *

(3) In any case involving a charged violation of law in which the respondent has admitted an allegation, evidence may still be presented to establish matters of aggravation or mitigation.

* * * * *

(i) *Foreign law.* A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

(j) *Foreign language exhibits.* Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name and qualifications of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

26. In § 904.252, revise paragraphs (a) and (f) to read as follows:

§ 904.252 Witnesses.

(a) *Fees.* Witnesses, other than employees of a Federal agency, summoned in an administrative proceeding, including discovery, are eligible to receive the same fees and mileage as witnesses in the courts of the United States.

* * * * *

(f) *Testimony in a foreign language.* If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must indicate that in its Initial Disclosures so that an interpreter can be arranged for the hearing. When available, the interpreter should be court certified under 28 U.S.C. 1827.

27. In § 904.260, revise paragraph (b) to read as follows:

§ 904.260 Recordation of hearing.

* * * * *

(b) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any hearing and will be supplied to the parties at the cost of the Agency.

* * * * *

28. In § 904.270, revise paragraph (b) to read as follows:

§ 904.270 Record of decision.

* * * * *

(b) The Judge will arrange for appropriate storage of the records of any administrative proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

29. In § 904.271, revise paragraphs (a) introductory text, (b), (c), and (d) introductory text to read as follows:

§ 904.271 Initial decision.

(a) After expiration of the period provided in § 904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render an Initial Decision upon the record in the case, setting forth:

* * * * *

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written Initial Decision under paragraph (a) of this section. In such cases, the Judge may direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the Initial Decision on each of the parties, the Chief of the Enforcement Section of the NOAA Office of General Counsel, and the Administrator.

Upon request, the Judge will promptly certify to the Administrator the record, including the original copy of the Initial Decision, as complete and accurate.

(d) An Initial Decision becomes effective as the final administrative decision of NOAA 60 days after service, unless:

* * * * *

30. Revise § 904.272 to read as follows:

§ 904.272 Petition for reconsideration.

Unless an order or Initial Decision of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or Initial Decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or Initial Decision. The filing of a petition for reconsideration shall operate as a stay of an order or Initial Decision or its effectiveness date unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the administrative proceeding may file an answer in support or in opposition.

31. Revise § 904.273 to read as follows:

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party who wishes to seek review of an Initial Decision of a Judge must Petition for Review of the Initial Decision within 30 days after the date the decision is served. The petition must be served on the Administrator in conformance with § 904.3(b) at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Copies of the Petition for Review, and all other documents and materials required in paragraph (d) of this section, must be served in conformance with § 904.3(b) on all parties and to either

administrative.appeals@noaa.gov or the following address: Chief, Oceans and Coasts Section, NOAA Office of General Counsel, 1305 East-West Highway, SSMC 4, Suite 6111, Silver Spring, MD 20910.

(b) The Administrator may elect to issue an order to review the Initial Decision without petition and may affirm, reverse, modify or remand, in whole or in part, the Judge's Initial Decision. Any such order must be issued within 60 days after the date the Initial Decision is served.

(c) Review by the Administrator of an Initial Decision is discretionary and is not a matter of right. If a party files a timely petition for discretionary review, or review is timely initiated by the Administrator, the effectiveness of the Initial Decision is stayed until further order of the Administrator or until the Initial Decision becomes final pursuant to paragraph (h) of this section. In determining whether or not to grant discretionary review, the Administrator will consider:

(1) Whether the Initial Decision contains significant factual or legal errors that warrant further review by the Administrator; and

(2) Whether fairness or other policy considerations warrant further consideration by the Administrator. Types of cases that fall within these criteria include, but are not limited to, those in which;

(i) The Initial Decision conflicts with one or more other NOAA administrative decisions or federal court decisions on an important issue of federal law;

(ii) The Judge decided an important federal question in a way that conflicts with prior rulings of the Administrator;

(iii) The Judge decided a question of federal law that is so important that the Administrator should pass upon it even absent a conflict; or

(iv) The Judge so far departed from the accepted and usual course of administrative proceedings as to call for an exercise of the Administrator's supervisory

power.

(d) A Petition for Review must comply with the following requirements regarding format and content:

(1) The petition must include a concise statement of the case, that contains a statement of facts relevant to the issues submitted for review, and a summary of the argument that contains a succinct, clear and accurate statement of the arguments made in the body of the petition;

(2) The petition must set forth, in detail, specific objections to the Initial Decision, the bases for review, and the relief requested;

(3) Each issue raised in the petition must be separately numbered, concisely stated, and supported by detailed citations to specific pages in the record, and to statutes, regulations, and principal authorities. Petitions may not refer to or incorporate by reference entire documents or transcripts;

(4) A copy of the Judge's Initial Decision must be attached to the petition;

(5) Copies of all cited portions of the record must be attached to the petition;

(6) A petition, exclusive of attachments and authorities, must not exceed 20 pages in length and must be in the form articulated in § 904.206(b); and

(7) Issues of fact or law not argued before the Judge may not be raised in the petition unless such issues were raised for the first time in the Judge's Initial Decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) The Administrator may deny a Petition for Review that is untimely or fails to comply with the format and content requirements in paragraph (d) of this section without further review.

(f) No oral argument on Petitions for Review will be allowed.

(g) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. An answer must comport with the format and content requirements in paragraphs (d)(5) through (d)(7) of this section and set forth detailed responses to the specific objections, bases for review and relief requested in the petition. No further replies are allowed, unless requested by the Administrator.

(h) If the Administrator has taken no action in response to the petition within 120 days after the petition is served, said petition shall be deemed denied and the Judge's Initial Decision shall become the final agency decision with an effective date 150 days after the petition is served.

(i) If the Administrator issues an order denying discretionary review, the order will be served on all parties in conformance with § 904.3, and will specify the date upon which the Judge's Initial Decision will become effective as the final agency decision. The Administrator need not give reasons for denying review.

(j) If the Administrator grants discretionary review or elects to review the Initial Decision without petition, the Administrator will issue an order to that effect. Such order may identify issues to be briefed and a briefing schedule. Such issues may include one or more of the issues raised in the Petition for Review and any other matters the Administrator wishes to review. Only those issues identified in the order may be argued in any briefs permitted under the order. The Administrator may choose to not order any additional briefing, and may instead make a final determination based on any Petitions for Review, any responses and the existing record.

(k) If the Administrator grants or elects to take discretionary review, and after expiration of the period for filing any additional briefs under paragraph (j) of this section, the Administrator will render a written decision on the issues under review. The Administrator will serve the decision on each of the parties in conformance with § 904.3.

The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision, and is a final agency action for purposes of judicial review; except that an Administrator's decision to remand the Initial Decision to the Judge is not final agency action.

(l) An Initial Decision shall not be subject to judicial review unless:

(1) The party seeking judicial review has exhausted its opportunity for administrative review by filing a Petition for Review with the Administrator in compliance with this section, and

(2) The Administrator has issued a final ruling on the petition that constitutes final agency action under paragraph (k) of this section or the Judge's Initial Decision has become the final agency decision under paragraph (h) or (i) of this section.

(m) For purposes of any subsequent judicial review of the agency decision, any issues that are not identified in any Petition for Review, in any answer in support or opposition, by the Administrator, or in any modifications to the Initial Decision are waived.

(n) If an action is filed for judicial review of a final agency decision, and the decision is vacated or remanded by a court, the Administrator shall issue an order addressing further administrative proceedings in the matter. Such order may include a remand to the Chief Administrative Law Judge for further proceedings consistent with the judicial decision, or further briefing before the Administrator on any issues the Administrator deems appropriate.

32. Revise § 904.300 to read as follows:

§ 904.300 Scope and applicability.

(a) This subpart sets forth procedures governing the suspension, revocation, modification, and denial of permits. The bases for sanctioning a permit are set forth in § 904.301.

(1) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(2) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(3) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson–Stevens Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

(4) *Denial.* Issuance of a permit in the future may be denied through imposition of a permit denial.

(b) This subpart does not apply to the Land Remote Sensing Policy Act of 1992, as amended (51 U.S.C. 60101 *et seq.*), or to the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*). Regulations governing denials of licenses issued under the Land Remote Sensing Policy Act of 1992, as amended (51 U.S.C. 60101 *et seq.*), appear at 15 CFR part 960. Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970.

33. Revise § 904.301 to read as follows:

§ 904.301 Bases for permit sanctions.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided by statutes or in this subpart, NOAA may sanction any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit include the

following:

(1) Violation of any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder/applicant or with the use of a permitted vessel;

(2) The failure to pay a civil penalty imposed under any marine resource law administered by NOAA;

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA; or

(4) The failure to pay any amount in settlement of a civil forfeiture imposed on a vessel or other property.

(b) A sanction may be applied to a permit involved in the underlying violation, as well as to any permit held or sought by the permit holder/applicant, including permits for other vessels. (See, *e.g.*, 16 U.S.C. 1858(g)(1)(i)).

(c) A permit sanction may not be extinguished by sale or transfer. A vessel's permit sanction is not extinguished by sale or transfer of the vessel, nor by dissolution or reincorporation of a vessel owner corporation, and shall remain with the vessel until lifted by NOAA.

34. In § 904.302, revise paragraph (a) to read as follows:

§ 904.302 Notice of permit sanction (NOPS).

(a) Service of a NOPS against a permit issued to a foreign fishing vessel will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

* * * * *

35. In § 904.303:

a. Remove and reserve paragraph (a); and

b. Revise paragraphs (b) and (d),

The revisions read as follows:

§ 904.303 Notice of intent to deny permit (NIDP).

* * * * *

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing.

* * * * *

(d) A NIDP may be issued in conjunction with or independent of a NOPS.

36. In § 904.304, revise paragraph (b) to read as follows:

§ 904.304 Opportunity for hearing.

* * * * *

(b) There will be no opportunity for a hearing to contest a NOPS or NIDP if the permit holder/applicant had a previous opportunity to participate as a party in an administrative or judicial proceeding with respect to the violation that forms the basis for the NOPS or NIDP, whether or not the permit holder/applicant did participate, and whether or not such a proceeding was held.

§ 904.310 [Removed and Reserved]

37. Remove and reserve § 904.310.

38. In § 904.311, revise the section heading, introductory text, and paragraph (b) to read as follows:

§ 904.311 Effect of payment on permit sanction.

Where a permit has been sanctioned on one of the bases set forth in § 904.301(a)(2) through (4) and the permit holder/applicant pays the criminal fine, civil penalty, or amount in settlement of a civil forfeiture in full or agrees to terms satisfactory to NOAA for payment:

* * * * *

(b) Any permit suspended under § 904.301(a)(2) through (4) will be reinstated by

order of NOAA; or

* * * * *

§ 904.320 [Removed and Reserved]

39. Remove and reserve § 904.320.

40. In § 904.402, revise paragraph (a) to read as follows:

§ 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) or Agency counsel may serve a written warning on a respondent.

* * * * *

41. In § 904.403:

- a. Remove and reserve paragraph (a); and
- b. Revise paragraph (b).

The revision reads as follows:

§ 904.403 Review and appeal of a written warning.

* * * * *

(b) The recipient of a written warning may appeal to the NOAA Deputy General Counsel. The appeal must be served in conformance with § 904.3 and submitted to *administrative.appeals@noaa.gov* or the NOAA Office of the General Counsel, Herbert Hoover Office Building, 14th & Constitution Avenue, NW., Washington, DC 20230, within 60 days of receipt of the written warning.

(1) An appeal from a written warning must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning.

(2) [Reserved]

* * * * *

42. Revise § 904.500 to read as follows:

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release, abandonment, forfeiture, remission of forfeiture, or return of property seized under any of the laws cited in § 904.1(c).

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under any of the laws cited in § 904.1(c). This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

43. Revise § 904.501 to read as follows

§ 904.501 Notice of seizure.

Within 60 days from the date of the seizure, NOAA will serve a Notice of Seizure on the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. In cases where the property is seized by a state or local law enforcement agency; a Notice of Seizure will be served in the above manner within 90 days from the date of the seizure. The Notice will describe the seized property and state the time, place and reason for the seizure, including the provisions of law alleged to have been violated. The Notice will inform each interested party of his or her right to file a claim to the seized property, and state a date by which a claim must be filed, which may not be less than 35 days after service of the Notice. The Notice may be combined with a Notice of the sale of perishable fish issued under § 904.505. If a claim is filed, the case will be referred promptly to the U.S. Department of Justice for institution of judicial proceedings.

44. In § 904.502, revise paragraph (c) to read as follows:

§ 904.502 Bonded release of seized property.

* * * * *

(c) If NOAA grants the request, the amount paid by the requester will be

deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by requester constitutes a waiver by requester of any claim rising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

* * * * *

45. Revise § 904.503 to read as follows:

§ 904.503 Appraisalment.

NOAA may appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisalment in the ordinary course of trade. If there is no market for the seized property at the place of appraisalment, the value in the principal market nearest the place of appraisalment may be used. If the seized property may not lawfully be sold in the United States, its domestic value may be determined by other reasonable means.

46. In § 904.504, revise paragraphs (a), (b)(1), and (b)(3)(i) to read as follows:

§ 904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property with a value of \$500,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) * * *

(1) Within 60 days from the date of the seizure, or within 90 days of the date of the seizure where the property is seized by a state or local law enforcement agency, NOAA will publish a Notice of Proposed Forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized or post a notice on an official government forfeiture

website for at least 30 consecutive days. However, if the value of the seized property does not exceed \$1,000, the Notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, U.S. District Court, or the U.S. Customs House nearest the place of seizure, with the date of posting indicated on the Notice. In addition, a reasonable effort will be made to serve the Notice on each person whose identity, address and interest in the property are known or easily ascertainable.

* * * * *

(3)(i) Any person claiming the seized property may file a claim with NOAA, at the address indicated in the Notice, within 30 days of the date the final Notice was published or posted. The claim must state the claimant's interest in the property.

* * * * *

47. In § 904.505, revise paragraph (c) to read as follows:

§ 904.505 Summary sale.

* * * * *

(c) NOAA will serve the Notice of the Summary Sale on the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

* * * * *

48. In § 904.506, revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 904.506 Remission of forfeiture and restoration of proceeds of sale.

(a) * * *

(1) This section establishes procedures for filing with NOAA a petition for the return of any property which has been or may be administratively forfeited under the

provisions of any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

* * * * *

(b) * * *

(1) Any person claiming an interest in any property which has been or may be administratively forfeited under the provisions of § 904.504 may, at any time after seizure of the property, but no later than 90 days after the date of forfeiture, petition for a remission or mitigation of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by the petitioner by serving the petition in conformance with § 904.3 on *administrative.appeals@noaa.gov* or the Chief of the Enforcement Section of the NOAA Office of General Counsel, 1315 East-West Highway, SSMC 3, Suite 15828, Silver Spring, MD 20910.

* * * * *

49. In § 904.509, revise paragraph (g)(2) to read as follows:

§ 904.509 Disposal of forfeited property.

* * * * *

(g) * * *

(2) Destruction will be accomplished in accordance with the requirements of 41 CFR parts 101-1 through 101-49.

* * * * *